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A judgment *in rem*, rendered in a Court in the State of Ohio, in virtue of the Act of the General Assembly of that State, entitled, "An Act providing for the collection of claims against steamboats and other water crafts, and authorizing proceedings against the same by name," passed February 26, 1840, and the act explanatory thereof, passed February 24, 1848, is to be regarded as a nullity by judicial tribunals in other States, unless the owner of the vessel proceeded against, appeared in the suit, and had an opportunity to make a defence.

The title, if any, acquired by the purchaser, at a sale of the vessel on execution, in virtue of such a judgment, is subordinate to the lien in favor of a material-man, conferred by the general maritime law of the United States, and the act of Congress, of February 26, 1845, ch. 20.

A judgment recovered in a proceeding under the statute of Ohio, in a Court of that State, for supplies, is not a bar to a subsequent suit *in rem* in admiralty, for the same supplies.

*Quære* — whether the provisions

of the statute of Ohio are not repugnant to the Constitution and laws of the United States. *The Globe*, 488.

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An assignment in trust, for the benefit of creditors, without preferences, by a majority of the members of an insolvent firm, is not valid. *Fisher v. Murray*, 589.

*Assumpsit*, 344.

*Attachment against non-resident*.

Where an attachment was issued against a non-resident debtor, on affidavits which were insufficient to confer jurisdiction on the officer issuing it, and after a levy made by the sheriff on the property of the debtor, the latter procured its release by executing and delivering a bond with sureties, reciting the issuing of the attachment, and conditioned as required by statute, for the payment of the debt with interest, costs, &c., the bond, was adjudged to be void.

Where a suit is brought on such bond by the creditor against the debtor and his sureties, the defendants are not estopped from setting up the invalidity of such bond, and availing themselves of the ground, that the proceedings under which the property was seized, were void. *Cadwell v. Choate*, 297.

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## B.

*Badges.*

The plaintiffs agreed with A., the proprietor of a hotel, to pay him a certain sum for the privilege of using the name of A., and of his hotel, on certain coaches of the plaintiff's, used for the conveyance of passengers to and from the hotel of A., and on certain badges worn by the drivers of those coaches; the plaintiff giving surety to A. for the good conduct of himself and servants, in the conveyance of such passengers.

*Held*, that the plaintiff had an exclusive right, as against third parties in the use of the name of A.'s hotel on his coaches and badges; that he was entitled to an injunction to restrain the use by any other party, on coaches or badges, of the name of A.'s hotel, or of any device or sign, which might induce a stranger to believe that the defendants were connected with the hotel of A. *Stone v. Carlan*, 360.

*Banker's cheque*, 312.

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*Bankruptcy*, 193, 421, 533.

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*Benefit of clergy.*

The Court of Appeals may give judgment after dismissal of an appeal, in a case of felony, and this, although the appeal has been abandoned, and the prisoner allowed the benefit of clergy.

Where the indictment charges the burning of a *house*, benefit of clergy is not taken away by statutes which take it from the burning of a *dwell-ing-house*, or barn having corn or grain in it. *State v. Sutcliffe*, 157.

*Benefit of trade*, 422.

*Bill of exchange*, 304, 344.

Payment of a bill of exchange by the drawer, who is also payee, to the indorsee, does not discharge the acceptor, where the drawer allows the bill to remain in the hands of the indorsee, in order that he may sue upon it for the benefit of the drawer.

*Assumpsit* by the indorsee of a bill of exchange, payable to the order of the drawer against the acceptor. Plea, payment by the drawer in satisfaction of the causes of action:—*Held*, that the plea was not supported by proof of the drawer having paid

the bill, and re-delivered it to the indorsee without re-indorsement, but with instructions from him to sue upon it. *Williams v. James*, 344.

*Bill of lading*, 304.

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The declaration alleged that the defendant fastened a gate across, and thereby obstructed the plaintiff's way, and injured his reversion: *Held*, after verdict for the plaintiff, on motion to arrest the judgment, that the declaration disclosed a good cause of action. The Court assumed that the facts alleged, had been proved to have injured the reversion. *Kidgell v. Moore*, 394.

*Charge*, 418.

*Charities*, 22.

*Charter*, railroad, 179.

*City council*, 191.

*Claim*, 420.

*Collision.*

Though a party driving on a public road, should lose all control of his horse, and an injury ensues in consequence, yet if the jury believe that the loss of control was the result of the defendant's prior fault, the plaintiff may recover.

Driving at the rate of fifteen miles an hour, or a mile in four minutes, on a public highway, is unlawful; and if death ensues from a collision thus produced, without fault of the injured party, the offence, it seems, would be murder in the second degree, unless accompanied with such circumstances of passion, as to reduce the offence to manslaughter.

In an action of trespass against the master of a horse, for a collision, it is for the latter to show that he was not in fault.

Where a collision occurs in a public road, if the jury believe the defendant was engaged at the time in a

trial of speed with a third party, the jury may give exemplary damages.

Where the Court charged the jury that they might give exemplary damages, which the jury declined to do, and found damages which the Court thought much too small, the Court, nevertheless, refused an application to grant a new trial, holding that the question of damages was one for the jury, with which the Court could not meddle. *Kennedy v. Way*, 184.

*Commercial paper*, 526.

*Common carrier*, 16, 188, 399, 410, 451.

Considerations stated by Kane, J., for holding a steam-tug to the rigid accountability of a common carrier, in opposition to the case in 3 Hill, N. Y. R. 9.

The captain of a steam-tug is the pilot of the voyage, and is the best judge of the sufficiency of the canal boat taken in tow to resist the weather, and of the adequacy of her crew to do what may be required for her protection, and cannot limit his responsibility, by a notice, given at the time of commencing the voyage, that it must be at the risk of the canal boat.

The steam-tug, notwithstanding such notice, is bound for the exercise of all that skill and care, which the circumstance of the case demand. *Vanderslice v. Superior*, 399.

The form of a question is very much in the discretion of the Judge, and if he exercise that discretion improperly, in overruling objections to a question as too leading, redress can only be obtained by application to the Court for a new trial. It is not the subject of an assignment of error.

Persons will be held responsible as partners, who hold themselves out as such, to those from whom they thus obtain credit, even though no such relation may in fact subsist between them.

In an action *ex contractu*, the non-joinder of a contractor, as defendant, can be taken advantage of by plea in abatement only. It is immaterial that the fact of non-joinder is presented by the evidence of the plaintiff.

Common carriers are not excused from their liability as insurers of the goods carried, because the loss oc-

curred by the fault of some third person, and not by the negligence of the carriers themselves. In the absence of any special contract, the causes which will excuse, must be such as will fall within the meaning of the expression — Act of God or public enemies.

*Quare*, whether in assumpsit a defendant can be held liable as a common carrier, without proof of actual negligence, unless the character from which the duty arises, is expressly laid in the declaration. *Mershon v. Hobensack*, 410.

*Company*, 419.

*Compromise with creditors*, 309.

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*Confessions*, 189.

*Conflict of laws*, 348.

*Consequential damages*, 362.

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*Constitution of Norway*, 213.

*Constitutional law*, 179, 488, 576.

The territorial government of Florida became superseded on the unconditional admission of the Territory into the Union as a State, on the 3d of March, 1845, and consequently the Territorial Court below, whose authority depended upon that government, had no jurisdiction to render a decree on the 22d of May, 1846.

The 17th Article of the Constitution of Florida, providing for the continuance of all laws passed by the Governor and Legislative Council of the Territory of Florida, until the General Assembly shall alter or repeal the same, and for the continuance in power of all territorial officers until superseded under the State Constitution, established the authority of the State throughout its limits, and was an adoption of the territorial laws and an appointment of territorial functionaries for the time being, but did not continue the jurisdiction of the territorial Courts as Courts of the United States.

The territorial Courts are not Courts in which the judicial power conferred by the Constitution of the Federal Government could be deposited within the limits of a State. They were incapable of receiving such jurisdiction, as the tenure of the incumbents was but for four years, and not during good behavior.

Other incidents of the admission of

a territory into the Union as a State.  
*Benner v. Porter*, 348.

*Construction of covenant*, 421.

*Contingent debt*, 421.

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*Corporation*.

Whether it is competent for an University Board to pass a contingent resolution of removal, to become absolute upon the decision of a certain important question by a committee appointed for that purpose, *quære*.

By the first section of the Act of Assembly of April 3, 1848, the trustees of the Madison University were authorized to change the location of the institution from Hamilton to Syracuse, Rochester, or Utica, provided that within one year they should file a resolution of the board, electing at which place said university should be located. *Held*, that a resolution to remove "to Rochester or its vicinity" was not within the terms of this act, and therefore, any location filed in pursuance of such a resolution, was not a compliance with the conditions of the act.

The University Board passed a resolution, by which it was declared "expedient to remove the Madison University to the City of Rochester, or its vicinity. The said removal to be conditioned that legal difficulties interposed be found insufficient; and that S. B. B., J. H., and R. K., be a committee to investigate such difficulties, and hear arguments. Upon their favorable report, such removal to be unconditional." *Held*, that if the committee never met, but conferred by letter, or at casual interviews, their power was not well executed.

Whether the filing of a resolution of removal could be delegated to a committee, *quære*.

In case of an illegal attempt to remove the university, the original subscribers to the fund, on the condition "that the Baptist Education Society should locate permanently a Literary and Theological Seminary in the Village of Hamilton," are entitled to an injunction to prevent such removal. Whether a similar remedy would exist to prevent the removal of the University which had

become consolidated with the Theological Seminary, *quære*. But if an attempt be made to remove the university against law, the subscribers to the fund are clearly entitled to equitable relief in the nature of an injunction. *Haskall v. Madison University*, 22.

*Costs*, 192, 417, 422.

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*Encroachments of Popery*, 539.

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Upon a railway company applying to Parliament for an act to make a railway, a land owner opposed it; but upon the company covenanting by deed to endeavor to obtain an act to enable them to make a branch line to some property of the land owner, and to make the branch, the land owner withdrew his opposition to the bill, and entered into certain covenants on his part. The company ob-

tained the act for making their original line, and the next session they obtained an act for making the branch line. The company were now about to apply for an act to enable them to abandon the making of the branch line. The land owner filed his bill against the company to compel specific performance of the contract to make the branch line, and for an injunction to restrain the application to Parliament, by the company, for the act to enable them to abandon the branch line: *Held*, dissolving the injunction which was granted by the Vice-Chancellor of England, that although this Court may, upon a proper case, interfere by injunction to restrain proceedings before Parliament, yet that it will not do so merely upon the ground that the act applied for would interfere with existing rights, which is only a ground for the party to be heard in opposition to the bill, and this whether the rights arise from property or contract.

*Semble*, there was a want of equity in this case, as this Court could not decree specific performance of a contract to make a railway. *Heathcote v. N. S. R. Co.*, 516.

*Error*, 421.

*Evidence*, 188, 194, 312, 313.

In a trial for rape, although the prosecutrix may have testified upon her direct examination that she had not had any previous criminal intercourse with other men, it is not competent for the defence to introduce evidence to contradict this statement. *Commonwealth v. Bickell*, 443.

*Evidence of term omitted*, 419.

*Excess of jurisdiction*, 311.

*Exclusive right to name*, 344.

*Execution*, 466.

*Execution creditor*, 466.

*Executory devise*, 193.

*Exemption from execution*.

Under a statute which exempts the necessary tools of a tradesman from execution, it is for the jury to decide whether the articles in question are necessary for the use of the defendant in the execution.

On this question the *opinions* of witnesses are not evidence, the facts themselves must be proved to the jury, and the latter must decide.

It is legal to admit evidence of the custom in relation to the use of a wagon and horse, in removing the tools of a carpenter and joiner in the country from one job to another. *Whitmarsh v. Angle*, 595.

*Expenses of suit*, 451.

The plaintiff cannot recover, as damages, a compensation for his trouble and expense in conducting his suit and establishing his right at law. *Murphy v. Jarvis*, 457.

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The crew of a ship, abandoned at sea, and set fire to by order of the master, who were upon monthly wages, cannot recover wages up to the time of abandonment, although the vessel, freight and earnings be fully insured, and certain articles (for which the crew received a compensation in the nature of salvage) were saved. *The Nippon's Crew*, 266.

## G.

*Garnishee*, 525.

*Gift in fee*, 419.

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Whether an act of the legislature, incorporating a railroad corporation, and authorizing them to take and use land, before compensation is made to him, is so far unconstitutional and void, *quære*. *Deering, in Equity, v. York & Cumberland Railroad Company*, 179.

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*Mortgagee*.

If a mortgagee of houses, not entitled by express contract to insure the premises against fire, at the mortgagor's expense, nor entitled to require the mortgagor to insure them against fire, nevertheless does so insure them, without the privity of the mortgagor, he will not be allowed, as a matter of course, to add the premiums of the policies to his mortgage debt, and charge them against the mortgage premises.

A mortgagee, though in some respects a trustee for the mortgagor, is not so to all intents and purposes; nor is he in all cases subject, as regards the mortgage property, to the rules of the Court restraining persons filling a fiduciary character, from having any dealings for their own benefit. *Dobson v. Land*, 247.

## N.

*Negligence*, 184, 188.

The general principle, that "one person's being in fault, will not dispense with another's using ordinary care for himself," is well settled. But this general rule is subject to a great many qualifications, among which is this,—that the care and diligence required of the plaintiff shall not exceed his capacity. *Robinson v. Cone*, 414.

*Negotiable note*, 533.  
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**NOTICES OF NEW BOOKS.**

*Meredith's Emerigon*, 322; *Dunlap's Admiralty*, 322; 6 *Washburn's Reports*, 371; 2 *Younge & Collyer*, 371; *Dean's Medical Jurisprudence*, 371; *Curwen's Overruled Cases*, 430; *Cushing's Domat*, 430; *Bemis' Report of the Webster Case*, 539; 2 *Philips' Chancery Reports*, 539; *Burrill's Law Dictionary*, 599; *Hare*

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A master is not in general liable  
to his servant for damage resulting  
from the negligence of a fellow-ser-  
vant.

*Aliter*, if in the selection of the  
servant who caused the injury, the  
master has not taken reasonable care  
to choose a person of ordinary skill  
and care; or if the servant injured

was not at the time of the injury act-  
ing in the service of his master.

When a servant of a railway com-  
pany, who was proceeding in the dis-  
charge of his duty, in a train belong-  
ing to the company, and guided by  
their servants, was killed by a collis-  
ion between it and another of their  
trains, guided by others of their ser-  
vants: *Held*, that no action under  
the 9 & 10 Vict., c. 93, was main-  
tained by his personal representative  
against the company, and that it  
made no difference in this respect,  
whether the accident was occasioned  
by the negligence of the servants  
guiding the train in which the de-  
ceased was, or of those guiding the  
other train, or of both.

A party who had contracted to  
erect a building, employed some  
bricklayers for the purpose, and it  
being his duty to provide the proper  
scaffolding, intrusted the care of this  
to his foreman. The foreman having  
used bad materials in the construc-  
tion of the scaffolding, it broke, and  
one of the bricklayers was killed:  
*Held*, that, in the absence of proof,  
that the foreman was a person defi-  
cient in skill, or improper to employ  
for that purpose, no action under the  
9 & 10 Vict., c. 93, was maintainable  
by the personal representative of the  
party killed, against their common  
employer.

The declaration in the former case  
stated the accident to have arisen  
from a combined neglect of the ser-  
vants, who were managing the train  
in which the deceased was, and of  
those who were managing that with  
which it came in collision: to which  
the defendants pleaded, "That at the  
said time when, &c., the said loco-  
motive steam-engine, in the said  
declaration, secondly mentioned, was  
driven upon and against, and came  
in collision with, the said railway  
carriage in which the deceased was  
such passenger, &c., in manner and  
form as in the declaration is alleged,  
solely by and through the careless-  
ness, negligence, unskillfulness, and  
default of the said servants of the  
defendants in the said declaration in  
that behalf mentioned, and for want  
of due care and attention by them,  
and not by or through any other neg-  
ligence, unskillfulness, default, or

want of due care and attention ; and that the said engines and carriages, at the said time when, &c., were respectively under the guidance, government, and direction of the said several servants of the defendants in the said declaration mentioned, and of no other person or persons ; and that the said several servants were then severally fit and competent persons to have the guidance, government, and direction of such engines and carriages as aforesaid respectively, as he, the deceased, at the said time when, &c., well knew. And the defendants further say, that the said carelessness, negligence, unskillfulness, and default, and want of due care and attention of the said servants of the defendants in the said declaration in that behalf mentioned, at the said time when, &c., and always, were wholly unauthorized by the defendants, and were entirely without the leave or license, knowledge, sanction, or consent of the defendants ;" concluding with a verification : *Held*, that this plea was not an argumentative denial of the case of action stated in the declaration.

*Semble*, per Alderson, B., that in an action brought under the 9 & 10 Viet., c. 93, for the benefit of the wife and children of a person killed by accident, the fact that the deceased had a wife and children, should be averred expressly, and not be stated by inference. *Hutchinson v. Y. N. & B. R. Co.*, 370.

*Purchase money*, 195, 465, 527.

## R.

*Railroad charter*, 179.

Under the words "*Railway and works*," any company has a right, by the compulsory powers of their charter, to take a piece of land for the purpose of building a station. *Cotter v. Midland Railway Co.*, 458.

*Railroad company*.

Declaration in case stated that defendants were proprietors of the Y. & N. M. Railway, and of certain carriages for the conveyance of passengers, cattle, and goods and chattels upon the said railway, for hire ; that they received nine horses of the plaintiff, to be safely and securely carried in the carriages of defendants by the

railway for hire ; and that thereupon it was the duty of defendants safely and securely to carry and convey and deliver the horses of plaintiff ; and then averred the loss of one, by reason of the insufficiency of one of the carriages. It appeared, that, when the horses were received, a ticket was given to plaintiff, stating the amount paid by plaintiff for the carriage of the horses, and the journey they were to go, and having at the bottom, the following memorandum : — " N. B. This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage, however caused, occurring to horses or carriages while travelling, or in loading or unloading : " — *Held*, that the terms contained in the ticket, formed part of the contract for the carriage of the horses ; and that the alleged duty of defendants, safely and securely to carry and convey the horses, did not arise upon that contract. *Shaw v. Y. & N. M. R. Co.*, 17.

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## S.

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*Sale of goods*.

There may be an acceptance and receipt of goods, sufficient to make a contract for the sale of goods valid within the meaning of the Statute of Frauds, without the buyer having examined the goods, or having done



any thing to preclude him from contending that they do not correspond with the contract.

On the 25th of August, defendant purchased of plaintiff, at M., wheat at 24s. per quarter by sample, and on the following morning he sent E., a lighterman, to receive it. On the 26th, after the delivery of the wheat to E., defendant sold it by plaintiff's sample to H., at W., at 56s. 6d. per quarter, and directed E. to deliver it to H. The wheat reached H. on the 29th, in the usual course, when he refused to take it, as not according to the sample; and on the 30th, defendant wrote to plaintiff, repudiating the wheat. In an action for goods sold and delivered,—*held*, that there was evidence on which the jury was justified in finding that defendant accepted, and actually received, the wheat, so as to render him liable as buyer. *Morton v. Tibbett*, 330.

*Sale of ship*, 310.

*Salvage*, 40, 266.

*Scire facias*, 527.

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*Shipment*, 188.

*Sir William Blackstone*, 370.

*Slavery*.

The owner of a slave has a right to seize him in a peaceable manner, wherever he can find him, not in a riotous, tumultuous and unreasonable manner; and if resisted by force, those who make the resistance are guilty of a breach of the public peace.

If forcibly resisted in his peaceable attempt to recapture his fugitive slave, the owner may lawfully use sufficient force to overcome the unlawful resistance offered, without being legally chargeable with the offence of riot. *Commonwealth v. Taylor*, 576.

*Specification*, 311.

*Specific performance*, 304, 419, 516.

*Statute of frauds*, 191, 311, 320.

*Story, Judge*, 37.

*Sunday*.

Where a Court is directed to sit two weeks, if a jury, having retired to consider of their verdict before midnight of Saturday in the first week, return into Court after midnight and before daylight of Sunday, their verdict may be received and published.

*Semble*.—It might be received at midday of any Sunday which is included within the term of the Court, both under the common law applicable to Courts not bound by the terms at Westminster, and under the statutes of this State.

*Semble*.—Although Sunday, when mentioned in a statute, begins and ends as another civil day, to it, as a common law festival, and as a holiday established by the usage of various sects of Christians disagreeing as to its beginning and end, common law prohibitions extend only from sunrise till sunset.

The receiving and publishing of a verdict is a judicial act.

History of the law as to Sunday and other holidays in Court.

Case of *McCombs v. Shaw*, (2 Bay, 232.) examined, and the report of it corrected. *Hiller v. English*, 542.

*Surety*, 309, 420.

*Surrender*, 312.

*Survey*, 463, 464, 534.

*Survivor*, 188.

## T.

*Taxes*, 191, 194.

*Tax-titles*, 195, 463.

*Tenant for life*, 185, 422.

*Tenant in common*, 464.

THE ATTORNEY GENERAL'S PREROGATIVE, 313.

THE CASE OF JAMES H. SUTLIFFE, 157.

THE OFFICE OF ATTORNEY GENERAL, 373.

THE PLEA OF LUNACY, 217.

THE SABBATH DAY, 541.

*The spirit of monopoly*, 597.

THE WEBSTER CASE, 1.

*Title*, 195.

*Tools of trade*, 595.

*Trade marks*, 318.

*Tradesmen's books*, 191.

*Trespass*, 184, 188, 464.

*Trover*.

C. & Co., merchants at New Orleans, bought corn as agents for

plaintiff, but with their own money, and shipped it, taking a bill of lading, by which the cargo was deliverable to their own order. C. drew bills of exchange on plaintiff, and indorsed them to defendants for value, and delivered the bill of lading to them as a security for the payment of the bills, and gave them a power of selling the cargo if the bills should not be paid. Afterwards C. sent the invoice, with notice of the bills of exchange, and a letter of advice, to plaintiff. When the bills, which had been deposited with the bill of lading by defendants at their bankers' in London, became due, plaintiff tendered payment of them; but, as they were accidentally mislaid on that day, the payment was not received, and plaintiff was desired to wait until the following morning. On that day, and since, plaintiff was unable to take up the bills: *Held*, in an action of trover, that a special property in the cargo passed to defendants when the bill of lading was delivered to them as a security, to which the general property of plaintiff in the cargo was subject; and that the offer of plaintiff to pay, and the request by the bankers of a day's delay, did not discharge plaintiff from his duty to pay the bills before his right to the possession of the cargo attached. *Jenkins v. Brown et al.*, 304.  
*Trustee*, 185, 247.  
*Turnpike*, 193.

## U.

*University*, 22.

*Usage*, 534.

*Usurious agreement*, 192.

## V.

*Venire*, 190.

*Verdict*, 190.

*Verdict rendered on Sunday*, 542.

*Vesting*, 419.

*Veterinary charges*, 312.

## W.

*Warranty*, 533.

*Warranty of soundness*, 190.

*Warranty of title*, 311.

*Wilde*, Judge, resignation of, 423, 570.

*Will*, 189, 193, 419, 464, 527.

A married woman, being also an infant, executed a will in 1844, under a power given to her by her father's will to dispose of certain property by will, in case of her decease without issue. In 1849, being still a *feme covert*, though of full age, she executed a proper will, conformably to the New York statute of April 11, 1849. *Held*, that the latter will revoked the former, so far as the former was duly executed, and that the last must be established as a valid will of real and personal estate. *In re Van Wert*, 506.  
*Wisbuy*, laws of, 473. \*

## Z.

*Zabriskie's reports*, 215.

